IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 962 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PREMENDRAKUMAR CHIMANLAL NAYAK & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MEHUL SHARAD SHAH for Applicant(s) : 1 - 2.
PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/07/2007

ORAL JUDGMENT

Rule. Shri RC Kodekar, learned APP waives service of rule on behalf of the respondent State. With consent of parties, this matter is taken up for final hearing today.

2. By way of this petition under Article 226 of the Constitution of India read with section 482 of Criminal Procedure Code , the petitioners- original accused, the husband of the respondent No.2 and aunt of petitioner No.1 have prayed to quash and set aside the complaint being C.R. No. I 163 of 2006 before the Sabarmati Police Station, Ahmedabad city and the charge sheet issued pursuant to the said complaint.

3. The respondent No.2, - original complainant, the wife of the petitioner No.1 filed criminal complaint being C.R. No. I 163 of 2006 registered before the Sabarmati Police Station mainly for the offence u/s 498-A, 323 and 114 of the IPC. It appears that there was some matrimonial dispute between the parties which ultimately lead to filing of the aforesaid complaint. Today, when the matter is called out, the learned advocates appearing on behalf of the respective parties i.e. the petitioner as well as respondent No.2 have jointly submitted that the parties have amicably settled the dispute amongst themselves and it has been agreed to take divorce between petitioner No.1 and respondent No.2 herein and that they have decided not to proceed further with the aforesaid

complaint and/or criminal proceedings. An affidavit-in-reply is also filed on behalf of respondent No.2, original complainant. The learned advocates appearing on behalf of the respective parties have relied upon the decision of the Hon'ble Supreme Court in the case of B.S. Joshi and others V. State of Haryana and another reported in 2003(1) GLH 351 and has requested to secure the ends of justice, the complaint as well as charge sheet be quashed as no fruitful purpose will be served in continuing with the criminal prosecution.

4. Heard the learned advocates appearing on behalf of the parties.

5. The petitioner No.1 is the husband of the respondent No.2, original complainant. It appears that there was a matrimonial dispute between them which ultimately lead to filing of the complaint in question. Now there is a settlement between the parties and the parties have desired not to proceed with the criminal prosecution/ proceedings. Now considering the affidavit filed by the respondent No.2, - original complainant to the effect that as per the settlement, she does not want to proceed further with the criminal proceedings against the petitioners and therefore, there is no reasonable likelihood of the accused being convicted of the offence. It may happen that at the time of trial, the wife, - respondent No.2 may not support the imputations made in the FIR and considering the over all circumstances of the case and

there would almost be no chance of conviction, it will be in the fitness of things to quash the complaint/charge sheet as it appears that continuation of the criminal proceedings against the petitioners after the settlement would not be in the interest of the parties and it would not be in the interest of justice to permit a prosecution to continue. Considering the above, it appears that chance of a ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue. Thus, in the facts and circumstances of the case, the complaint/charge sheet is required to be quashed.

6. For the reasons stated above, the petition succeeds. The complaint being C.R. No. I 163 of 2006 before the Sabarmati Police Station, Ahmedabad city and the charge sheet issued pursuant to the said complaint is hereby quashed and set aside. Rule made absolute.

(M.R. Shah, J.)

shekhar/-